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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,331	09/10/2004	Walt Ortmann	81105739 / FMC 1796 PUSP	5330
28395 7590 01/24/2007 BROOKS KUSHMAN P.C./FGTL 1000 TOWN CENTER 22ND FLOOR SOUTHFIELD, MI 48075-1238			EXAMINER LEWIS, TISHA D	
			ART UNIT 3681	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE			MAIL DATE	DELIVERY MODE
3 MONTHS			01/24/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/711,331

Applicant(s)

ORTMANN ET AL.

Examiner

TISHA D. LEWIS

Art Unit

3681

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 10-22 and 24 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-9 and 23 is/are allowed.
- 6) ☒ Claim(s) 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

### **DETAILED ACTION**

The following is a first action on the merits of application serial no. 10/711,331 filed on September 10, 2004.

#### ***Election/Restrictions***

Applicant's election with traverse of Group I in the reply filed on November 8, 2006 is acknowledged. The traversal is on the ground(s) that claims 22 and 25 are generic to the species. This is not found persuasive because claim 22 is generic only to the species of group I due to the limitations in lines 11-13. Examiner agrees that claim 25 is generic to both species and should be examined with the elected group.

The requirement is still deemed proper and is therefore made FINAL.

#### ***Information Disclosure Statement***

The information disclosure statement filed on September 10, 2004 has been considered.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 25 is rejected under 35 U.S.C. 102(a) as being anticipated by Ibamoto et al ('313). Ibamoto et al discloses a control having a powertrain (1), an electric motor (7) and a battery (8), the battery is electrically coupled to the motor, the motor being disposed in a power flow path between the engine and a power input member of a

transmission as driving power is delivered to a power output member (6), an electronic controller (via Figure 9) responsive to powertrain operating variables for controlling actuating pressure of friction clutches wherein a motor torque is changed (increased) during a ratio change whereby the input torque of the transmission is modulated (increased) to effect a reduction in torque fluctuations (Figure 9, To decreases at inertia phase) during the ratio change and the input torque is a combination of engine and motor torque combined (during motor assist mode).

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claim 25 is rejected under 35 U.S.C. 102(b) as being anticipated by Omote ('630). Omote discloses a control having a powertrain (1), an electric motor (4) and a battery (6), the battery is electrically coupled to the motor, the motor being disposed in a power flow path between the engine and a power input member of a transmission as driving power is delivered to a power output member (32), an electronic controller (5) responsive to powertrain operating variables for controlling actuating pressure of friction clutches wherein a motor torque is changed (decreased) during a ratio change whereby the input torque of the transmission is modulated (reduced) to effect a reduction in torque fluctuations (gently decrease) during the ratio change and the input torque is a combination of engine and motor torque combined (during motor assist mode).

***Allowable Subject Matter***

Claims 1-9 and 23 are allowed.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

-Urasawa ('125) and Baraszu et al ('026).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TISHA D. LEWIS whose telephone number is 571-272-7093. The examiner can normally be reached on M-F 7:30 AM TO 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CHARLES A. MARMOR can be reached on 571-272-7095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Tdl

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January 21, 2007

  
TISHA LEWIS  
PRIMARY EXAMINER  
AU3681 1/21/07